

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890/DWHZ
08 December 2011

LaShawn Carter
[REDACTED]

RE: Claim Number: N10036-1532

Dear Ms. Carter:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1532 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1532.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1532
Claimant	LaShawn Carter
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 17 October 2011, LaShawn Carter (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$10,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant alleges being terminated from Krispy Klean Cleaning located in Panama City, Florida, because of the Deepwater Horizon oil spill.¹ She worked as a house cleaner for apartments and condos on the beach.² The Claimant asserts she lost wages in the amount of \$10,000.00.³

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents.

¹ Letter of explanation from the Claimant undated.

² The Claimants response to question three for the NPFC's request for additional information 05 December 2011.

³ Optional OSLTF claim form dated 03 October 2011.

In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for-

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, the Claimant submitted:

- 1) Optional OSLTF claim form dated 03 October 2011.
- 2) Letter of explanation from the Claimant undated.
- 3) 2010 W-2 from Krispy Klean Cleaning
- 4) Previous jobs employer letter from Microtel Inn & Suites Hotel dated 24 August 2009.
- 5) Earnings record for Krispy Klean Cleaning for 18 March 2010 through 08 April 2010.
- 6) Paystub from Krispy Klean Cleaning dated 18 March 2010.
- 7) Paystub from Krispy Klean Cleaning dated 08 April 2010.
- 8) 2009 W-2 from Shri Krishnay Namah, Inc.
- 9) Copy of Mississippi Drivers License.
- 10) Copy of Social Security Card.
- 11) Written response to NPFC's request for additional information received 05 December 2011.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$10,000.00.

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 09 September 2010 in the amount of \$10,000.00.⁴ She was assigned Claimant ID #3010862 and claim #59230. This claim was denied on 22 October 2010.⁵ Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF EAP claim is the same as the subject matter of her claim before the NPFC, i.e., that she lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the denied GCCF EAP claim to be properly presented to the responsible party and properly presented to the NPFC.

⁴ Report from the GCCF dated 05 December 2011.

⁵ GCCF Denial Letter dated 22 October 2010.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all the documentation submitted by the Claimant.

The Claimant alleges that she was terminated from her job at Krispy Klean Cleaners (KKC) because of the Deepwater Horizon oil spill.⁶ The Claimant's 2010 W-2 for KKC is in the amount of \$324.65.⁷ The Claimant's earning record from KKC shows she earned money in three pay periods totaling \$324.65.⁸ The last pay period ended 08 April 2010, prior to the Deepwater Horizon oil spill.⁹ Furthermore, the NPFC staff contacted the Claimant's former employer KKC on 02 December 2011.¹⁰ The Manager stated that the Claimant did not lose her job due to the oil spill and confirmed that the Claimant left KKC prior to the date of the spill.

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. §§ 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

Claimant's request for \$10,000.00 is hereby denied because the evidence presented in the claim by the Claimant versus her 2010 W-2, Earnings Records, and the information provided by the employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order to falsely obtain funds from the Federal Government and as such, this claim is denied.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Letter of explanation from the Claimant undated.

⁷ 2010 W-2 from Krispy Klean Cleaners.

⁸ Earnings Record for Krispy Klean Cleaners for 18 March through 08 April 2010.

⁹ Earnings Record for Krispy Klean Cleaners for 18 March through 08 April 2010.

¹⁰ NPFC conversation with Will Cook at Krispy Klean Cleaners 02 December 2011.